

## **Case of Suresh Yadav**

The complaint in this case relates to custodial death of Suresh Yadav of Tikaichak, P.S Pipra., District Patna in Masaurhi Sub-Jail on 3.6.2007. The occurrence was initially registered as a U.D. Case; later on the intervention of the Patna High Court a regular case being Masaurhi P.S. Case No. 86/08 dated 11.3.2008 was registered u/s 304 IPC against the officials of Masaurhi Sub Jail.

It may at the outset be mentioned that the Jail Doctor and the Inquest Report did not find anything amiss but in the post mortem report the doctor found three injuries on the lower portions of the body including scrotum of the deceased person. The Assistant Professor of the Department of Forensic Medicine, PMCH whose opinion was also sought, held that “Vasovaghal shock due to above mentioned injuries can cause death”. However, the Dy.SP , Masaurhi, Shri Sushil Kumar, who supervised the investigation took the view that case was not proved against the FIR named accused. In coming to this view he relied on the death certificate and the inquest report among other things. He nevertheless in view of the “discrepancy” in the medical reports recommended that a medical board be constituted. Curiously, SP (Rural) Patna over-ruled the Dy.SP and directed the final report ‘false’ be submitted as in his opinion there was no need for constituting medical board. Final report No. 203/08 was submitted on 21.6.2008.

Taking cognizance of the complaint filed by the son of the deceased, the Commission called for report from the Senior SP, Patna who vide her report dated 21.3.2009 informed the Commission that final report has been submitted on the direction of Rural SP, Patna.

Not able to appreciate the manner in which SP (Rural), Patna directed submission of final report overruling the recommendation of the Dy.SP for constitution of medical board and being satisfied that it was a case of custodial death and the circumstances leading to death were suspect, and therefore it was fit case for compensation, the Commission vide its decision dated 30.4.2009/4.5.2009 directed that notice be issued to the State Government through the Principal Secretary, Department of Home as to why compensation be not awarded in respect of the custodial death of Suresh Yadav. SP (Rural) Patna was also directed to submit response as to why the Government be not asked to enquire into his conduct. The State Government has not submitted response. Rural SP, however, has sent his

response dated 5.7.2009 in which after making an attempt to justify his decision, he has stated that the Superintendent, PMCH was being requested to constitute a medical team and secondly officer-in-charge, Masaurhi P.S., was being directed to seek necessary order from the concerned court for reinvestigation of the case.

While issuing the above mentioned notice the Commission has observed as under—

“We are of the view that not much reliance could be placed on the opinion of the Jail Doctor suggesting that the death was due to heart failure or the inquest report by the magistrate since the purpose of inquest is not to ascertain the cause of death-whether by a police officer or a magistrate, as the case may be. In any view, a medical board should have been constituted to resolve the conflict as was proposed earlier. It is not at all understandable why the proposal was dropped at the behest of the Rural SP, Patna on whose direction, in fact, final report was submitted in the case. It is to be noted that in the beginning only a U.D. case was registered; it was only when the family moved the High Court that a regular case was instituted. We find the conduct of the Rural SP suspect and we are of the view that the same may have to be examined by the Government at the appropriate level. In the facts and circumstances, we are also of the view that compensation should be awarded to the next-of-kin of the deceased.”

The response of the Rural SP dated 5.7.2009 is totally unsatisfactory and it does not improve the position at all, we accordingly stand by our observations quoted hereinabove. The volte-face shown by the officer in now making request for constitution of medical team and reinvestigation of the case, if we may say so a tacit admission of his guilt. We say nothing more as the guilt or otherwise of the officer is to be determined by the appropriate authority of the State Government in a disciplinary proceeding. We were inclined to recommend the proceeding against the officer, Shri Upendra Kr. Sinha, SP (Rural) Patna, but defer the decision as we think, it may be appropriate to obtain the comments of the DGP, Bihar.

Let a copy of the order be sent to DGP, Bihar for his comments by 31.7.2009.

The State Government may also be informed that the response in the matter of proposed compensation to victim's family may be filed by 31.7.2009.

Put up on 4<sup>th</sup> August, 2009.

Justice S.N. Jha  
Chairperson

R.R. Prasad  
Member

The complaint herein relates to custodial death of Suresh Yadav of village Tikaichak P.S. Pipra, district Patna in Masaurhi Sub Jail on 3.6.2007. The incident was initially registered as a U.D. Case; later, on the intervention of the Patna High Court, a regular case being Masaurhi P.S. Case No. 86/08 dated 11.3.2009 under section 304 IPC was registered against the officials of Masaurhi Sub Jail.

Taking cognizance of the complaint filed by son of the deceased, the Commission called for report from Senior SP Patna who vide report dated 31.3.2009 informed the Commission that final report has been submitted in the case on the direction of Rural SP Patna.

It may be mentioned here that Jail Doctor and inquest report did not find anything amiss but in the post-mortem report the doctor found three injuries on the lower portions of the body including scrotum of the deceased. The Assistant Professor, Department of Forensic Medicines, PMCH whose opinion was also sought observed that "Vasovaghal shock due to above mentioned injuries can cause death". Dy.SP Masaurhi, Shri Sushil Kumar, who supervised the investigation, took the view that the case was not proved against the FIR named accused in view of the death certificate and the inquest report. Nevertheless in view of the "discrepancy" in the medical reports he recommended that a medical board be constituted. Curiously, the Rural SP, Shri Upendra Kr. Sinha over-ruling the Dy.SP held that, there was no need of constituting medical board, directed that the final report "false" be submitted. Final Report No. 203/08 was accordingly submitted on 21.6.2008.

Not able to appreciate the manner in which Rural SP pre-empted the constitution of medical board and directed submission of final report, and being prima facie satisfied that it was a case of custodial death and the circumstances leading to death were suspect, the Commission took the view that it was a fit case for grant of compensation and scrutiny of his conduct at the appropriate level of the government. Accordingly, vide decision dated 30.4.2009 notice was issued to the State Government, Department of Home and Rural SP Patna as to why compensation be not awarded in respect of the custodial death of Suresh Yadav the government be not asked to enquire into his conduct. The Home Department as usual did not respond to the notice. The Rural SP, however, submitted his representation dated 5.7.2009 in which after making an attempt to justify his decision for submission of the final report, he stated that the Superintendent PMCH was being requested to constitute

medical board and, secondly, that the Officer-in-Charge Masaurhi P.S. was being asked to seek necessary order from the court for re-investigation of the case.

The said representation was considered by the Commission and it was found to be totally unsatisfactory vide decision dated 13.7.2009. The Commission noticed its earlier finding contained in the order dated 30.4.2009 as follows:-

“We are of the view that not much reliance could be placed on the opinion of the Jail Doctor suggesting that the death was due to heart failure or the inquest report by the magistrate since the purpose of inquest is not to ascertain the cause of death-whether by a police officer or a magistrate, as the case may be. In any view, a medical board should have been constituted to resolve the conflict as was proposed earlier. It is not at all understandable why the proposal was dropped at the behest of the Rural SP, Patna on whose direction, in fact, final report was submitted in the case. It is to be noted that in the beginning only a U.D. case was registered; it was only when the family moved the High Court that a regular case was instituted. We find the conduct of the Rural SP suspect and we are of the view that the same may have to be examined by the Government at the appropriate level. In the facts and circumstances, we are also of the view that compensation should be awarded to the next-of-kin of the deceased.”

The Commission observed, while rejecting the representation, that “the volte-face shown by the officer in now making request for constitution of medical team and reinvestigation of the case, if we may say, is a tacit admission of his guilt.” The Commission did not make further comments on the conduct of the officer observing that “the guilt or otherwise of the officer is to be determined by the appropriate authority of the State Government in a disciplinary proceeding”. Having made these observations the Commission thought it appropriate to obtain the comments of the DGP being head of the State Police Force before recommending initiation of departmental proceeding against the officer i.e. the then Rural SP Patna, Shri Upendra Prasad Sinha.

A communication dated 25.8.2009 has been received from the office of the DGP enclosing therewith copy of the report of SP (C), CID dated 29.7.2009 from perusal of which it appears that the CID has given a twist to the proceeding. After referring to the facts of the case and making comments on merits, the SP took the view that permission of the court for re-investigation may be taken after receipt of the opinion of the medical board. It appears from the communication dated 25.8.2009 that the DGP has agreed with the suggestion of the SP CID.

We regret to say that the DGP's comments were sought on the point of initiation of department proceeding against Shri Upendra Kr. Sinha being head of the State Police Force and therefore reference to the CID was totally uncalled for. It is clear that the report of CID – with which the DGP has agreed – has taken the matter steps backward. As seen above the Rural SP had taken two-fold stand that a medical board be constituted and second that the case be re-investigated under section 173(8) Cr.P.C. after obtaining the orders of the concerned court. In view of the scope of the references made by the Commission the DGP should have confined himself to the conduct of the officer and not made reference to CID seeking its opinion on merit of the case.

It may be mentioned here that under section 18 of the Protection of Human Rights Act, the Commission is empowered, among other things, to recommend payment of compensation and damages and initiation of proceedings for prosecution or such other suitable action as the commission may deem fit against the concerned person or persons. The Commission, therefore, could have straightway recommended initiation of disciplinary proceeding against the officer while rejecting his representation vide letter dated 13.7.2009 but from an administrative view it was thought appropriate to obtain the comments of the DGP.

Be that as it may, as observed in the order dated 13.7.2009 (supra), we stand by our observations, quoted hereinabove. We reiterate that any conflict between the opinion of the Jail Doctor and the doctor who performed the post mortem corroborated by the Assistant Professor, Department of Forensic Medicines PMCH, referred to above, could be resolved only by a board of doctors and therefore it is totally un-understandable that the then Rural SP, Upendra Kr. Sinha should preempt constitution of the board and order submission of final report. The conduct of Rural SP is clearly suspect and it would be but appropriate that the same is examined by the Government at the appropriate level in a departmental proceeding. It need hardly be emphasized that if it is a fact that the deceased was assaulted in judicial custody leading to his death, it would be a travesty of justice to bury the case without a fair investigation and trial.

We, accordingly, direct the State Government through Secretary, Department of Home, to initiate a departmental proceeding against the officer, Shri Upendra Kr. Sinha, the then Rural SP Patna and take the matter to its logical end. We further direct

the State Government, through the Secretary of Home to pay a sum of rupees one lakh as compensation to the next-of-kin of deceased Suresh Yadav.

Compliance report be submitted within six weeks.

The applicant be informed of this order. Copy of this order may also be sent to the DGP, Bihar.

Justice S.N. Jha  
Chairperson

Justice Rajendra Prasad  
Member